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Supreme Court of the United States

October Term, 1976
No. 76-357

LINMARK ASSOCIATES, INC. AND WILLIAM MELLMAN,
Petitioners,

vs.

THE TOWNSHIP OF WILLINGBORO AND GERALD DALY,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF AMICI CURIAE THE CITIES OF SHAKER HEIGHTS, OHIO, AND CLEVELAND HEIGHTS, OHIO

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I.

INTEREST OF THE AMICI CURIAE*

The cities of Shaker Heights and Cleveland Heights are chartered municipal corporations of the State of Ohio.

*No letters of consent from the Petitioners and Respondents to the filing of this brief have been obtained since, under Rule 42(4), *amici curiae* City of Shaker Heights and City of Cleveland Heights need not obtain such consent as political subdivisions of a State which are filing an *amicus curiae* brief sponsored by their authorized law officers.

Cleveland Heights is north of and adjacent to Shaker Heights, and both cities border upon the east side of the City of Cleveland. Both Shaker Heights and Cleveland Heights prohibit the posting of "for sale", "sold", and other signs relating to the sale of real estate in residential districts, by means of zoning provisions much like the challenged zoning ordinance of Respondent Township of Willingboro.

The interest of Shaker Heights and Cleveland Heights in this case is predicated upon the important concerns of public peace, safety, and welfare stemming from the prohibition of outdoor advertising in residential areas and from the stability in the integrated communities of Shaker Heights and Cleveland Heights engendered to a great degree by zoning provisions like the one at issue. Further, the prohibition of signs pertaining to the sale of realty in residential areas is a vital part of comprehensive programs in Shaker Heights and Cleveland Heights to foster stabilized housing integration by combatting the psychology of fear and the promotion of panic selling of homes spawned to a large degree by realty sale signs.

Amici curiae respectfully submit that this Court must uphold the decision below of the Third Circuit Court of Appeals, which found constitutional the Willingboro zoning ordinance at issue. A reversal of that decision would have the serious effect of eroding the police powers of all American municipalities over local zoning policy. A reversal would also strike a crippling blow to the significant, successful inroads that Shaker Heights and Cleveland Heights have made toward coping with rapid community racial change and in fostering truly integrated communities.

II.

PRELIMINARY REMARKS

The zoning ordinances prohibiting signs pertaining to the sale of realty in residential districts have existed in Shaker Heights since April, 1964, and in Cleveland Heights since December, 1967. The Shaker Heights provision was one of the first of its kind in the United States. These zoning provisions primarily stemmed from the disruption to community peace, safety, and welfare in the early 1960's which resulted from the unfounded, irrational fears of residents and the panic selling of homes due to the rapid influx of black families from the City of Cleveland into Shaker Heights and Cleveland Heights.

Prior to enacting zoning ordinances prohibiting residential real estate signs, both Shaker Heights and Cleveland Heights made careful studies of the situation presented by such signs. The realty sale signs were found to be aesthetically displeasing and a burdensome imposition of commercialism into residential areas. The signs were also found to be an effective "tool" for certain real estate brokers to use in applying pressure to homeowners to sell their homes in the face of artificial, fear-imposed, "eroding" property values—the sad phenomenon of "blockbusting". For instance, in the early 1960's on a certain street in Shaker Heights, the arrival of the first black family on the street was "greeted" by a dozen "for sale" signs out of a total of about fifty homes on the street. This scene was repeated on many other streets. Such a use of realty sale signs breeds a psychology of fear.

The realty sale signs were employed by certain real estate brokers and other individuals in Shaker Heights and Cleveland Heights without consideration of the effect the signs would have on the delicate process of neighborhood

integration. A feeling of negativity is bred by the sight of a neighborhood sprouting such signs. The negative feelings readily develop into panic among homeowners who don't want to leave the neighborhood, but are pressured into it by unscrupulous realtors and other individuals who have no concern for the welfare of the community, who point out the signs and force-feed white homeowners unfounded fears of eroding property values resulting from each new black family.

III.

ARGUMENT

1. The prohibition of real estate sale signs in residential districts is a constitutionally valid exercise of municipal police power.

Real estate sale signs are basically outdoor advertising. The zoning ordinances of local governments to regulate outdoor advertising have long been recognized as constitutional exercises of the local police power to advance public health, safety, morals, and welfare. See, e.g., R. ANDERSON, AMERICAN LAW OF ZONING 2d, §§7.16, 15.82, 15.83 (1976), and cases cited therein.

Both Shaker Heights and Cleveland Heights do not limit their outdoor advertising restrictions merely to realty sale signs. All forms of outdoor business advertising are prohibited in residential districts under the zoning codes of both cities.

Regulations which exclude signs from residential districts have been upheld as constitutionally valid protection of public interests, which interests have been found as more than local aesthetics. R. ANDERSON, *supra*, at §15.83. In this case, the primary public interests to be advanced

by the prohibition of real estate sale signs are the preservation of property values, and the promotion of stabilized community integration as well as the benefits to all which stem from living in a heterogenous racial environment—a hope to many in the United States, but very much a reality in Shaker Heights and Cleveland Heights.

An ordinance regulating the usage of signs such as the one in issue is a constitutional exercise of local police powers over zoning. Such an enactment is consistent with sound zoning practices regulating commercial invasions into residential peace and privacy. "The police power is not confined to elimination of filth, stench and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974).

2. The prohibition of real estate sale signs in residential districts of Shaker Heights and Cleveland Heights has strengthened property values and has been widely accepted by the local realty community.

Petitioners Linmark Associates, Inc. and William Mellman argue that the only remedy a local government has to combat racially-motivated panic selling is by educating the citizenry, not by restricting outdoor realty advertising. Petitioners' Brief, at 17. It has been the experience of Shaker Heights and Cleveland Heights that much more than education is necessary to cure the effects of generations of segregation and discrimination. An extensive program of educating the community that racial fears were unfounded was attempted with only limited success in Shaker Heights before the City took the necessary step in 1964 of prohibiting "for sale" signs. See

Alfred and Marcoux, *Impact of a Community Association on Integrated Suburban Housing Patterns*, 19 CLEVE. ST. L. REV. 90, 91-92 (1970).

It is significant that for almost thirteen years in Shaker Heights, and for nine years in Cleveland Heights, no realtors or other persons have challenged the cities' realty sign prohibition ordinances. Initial opposition was voiced to the enactment of the zoning provisions, but it did not last for long. It has been the experience of both cities that realtors have come to embrace the prohibition, and have readily cooperated with it.

The prohibition of realty signs has been a major factor in promoting a meaningful process of community integration in Shaker Heights and Cleveland Heights while helping to reduce the flight of white families to other communities. The realty sign ordinances are not, however, tied into racial "steering". Shaker Heights nor Cleveland Heights do not prohibit or limit other means of listing homes for sale, such as by media advertisements, realtor listing pools, or any other means. The realty community has come to appreciate the value of the real estate sale sign prohibition, for it has greatly helped to strengthen the real estate market in Shaker Heights and Cleveland Heights by preserving and stabilizing property values.

3. The prohibition of real estate sale signs in residential districts is an important facet of affirmative action by local governments to promote community integration.

The prohibition of real estate sale signs in residential districts is one facet of ongoing, extensive programs in Shaker Heights and Cleveland Heights to induce real estate brokers to renew their dwindling efforts in the integrated communities; to effect increased demand by white

families for housing in integrated areas; to foster a closer working relationship between realtors and neighborhood associations; and, above all, to insure stabilized integration in Shaker Heights and Cleveland Heights.

Both cities have agencies to work toward achieving the above objectives, the Shaker Heights Housing Office and the Cleveland Heights Community Congress. The operations and success of these agencies are well documented. See, e.g., *Integrated Housing Thrives in Suburb*, N.Y. Times, Oct. 18, 1975, p. 1; *Heights Community Congress v. Rosenblatt Realty*, No. D74-1059, P-H Equal Opp. in Housing at 14,473, ¶13,702 (U.S.D.C. N.D. Ohio 1975); Blank, *Ludlow—A Lesson in Integration*, READER'S DIGEST, (Sept., 1968); Marcoux, *Integrated Housing*, NATION'S CITIES (Oct., 1973); *Integration: One Way to Avoid Busing*, N.Y. Times, Aug. 13, 1972. Other means taken by Shaker Heights and Cleveland Heights to effect stabilized integration are real estate review committees consisting of municipal officials, realtors, and members of the community, as well as ordinances prohibiting "blockbusting" and racial "steering".

The dissenting opinion of Circuit Judge Gibbons in the decision below (535 F.2d 786, 805-816) contends that the intended purpose of the Willingboro realty sign prohibition ordinance is one of discrimination against racial minorities. His analysis implies that governmental action to stabilize community integration is unconstitutional, because such stabilization activity somehow bars minorities from a community and thus creates a discriminatory impact.

However, ordinances such as the one in issue are intended to promote and stabilize integration, not defeat it. The goal of our national housing policy is to "replace the ghettos" with truly integrated and balanced living patterns for all races. *Trafficante v. Metropolitan Life Ins. Co.*,

409 U.S. 205 (1972). Proper provision for adequate housing of all races is absolutely essential in the promotion of the general welfare of a community. A municipality has an affirmative obligation to meet the needs and desires of all people who desire to live in a community. *Southern Burlington County NAACP v. Town of Mt. Laurel*, 67 N.J. 151, 336 A.2d 713 (1975), *cert. denied*, 423 U.S. 808 (1976); *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 378 N.Y.S. 2d 672, 341 N.E.2d 236 (1975). A municipality must take the responsibility of insuring that a segregated housing pattern does not develop in the community. See *Metropolitan Housing Dev. Corp. v. City of Arlington Hts.*, 517 F.2d 409 (7th Cir. 1975), *app. pending*, 423 U.S. 1030 (1976).

The real estate sale sign prohibition ordinances of Willingboro, Shaker Heights, and Cleveland Heights are primarily designed to counteract the evil effect upon a community promulgated by realtors through racial steering, blockbusting, and panic selling. See *Zuch v. Hussey*, 366 F. Supp. 553 (E.D. Mich. 1975). Such an ordinance prevents unscrupulous realtors and other individuals who have no concern for the welfare of the community from preying upon the fears of property owners in racially transitional areas and thereby inducing the kind of panic selling which results in community instability and decline. See *U. S. v. Mitchell*, 335 F. Supp. 1004 (N.D. Ga. 1971).

The promotion of orderly integration by the use of the zoning ordinance at issue may well be said to rise to the level of a compelling governmental interest, which supercedes any rights that realtors, independent home sellers, prospective home buyers, or any other individual may have relative to the posting of "for sale" or "sold" signs in front of homes. The Township of Willingboro and the cities of Shaker Heights and Cleveland Heights have acted to balance individual and collective interests to insure

open, integrated communities. The interest of black and white citizens in stable communities outweighs any minor inconvenience to personal interests. *Barrick Realty v. City of Gary*, 491 F.2d 161 (7th Cir. 1974).

IV.

CONCLUSION

We submit that much more than governmental restrictions upon commercial real estate marketing methods is at issue in this case. At stake are the entire police power of local governments over local zoning policy and the vital function of local governments to regulate and effect fair housing practices and stabilized integration in order to prevent "ghettoization" and ensuing community deterioration and blight. A reversal of the decision below would effectively curtail the power of a community over its development and destiny. Therefore, *amici curiae* City of Shaker Heights and City of Cleveland Heights respectfully request the Court to uphold the ordinance of the Township of Willingboro in issue and to affirm the decision below of the Third Circuit Court of Appeals.

Respectfully submitted,

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